



DECISION COVER SHEET

☒ **ACTION BY:** Public Members Only

☐ **ACTION BY:** All Members

To : BOARD MEMBERS

Date: April 26, 2019

From : ADMINISTRATIVE LAW JUDGE: Anthony M. Skrocki

CASE: FAIRFIELD IMPORTS THREE, LLC, a California Limited Liability Company v. HYUNDAI MOTOR AMERICA, a California Corporation
Protest Nos. PR-2582-18 and PR-2583-18

TYPE: Vehicle Code section 3060 Termination

PROCEDURAL SUMMARY:

- FILED ON CALENDAR: December 7, 2018
- MOTIONS FILED: "Respondent Hyundai Motor America's Motion to Dismiss Protests"
- COUNSEL FOR PROTESTANTS: Christian J. Scali, Esq.
Halbert B. Rasmussen, Esq.
Jade F. Jurdi, Esq.
Scali Rasmussen
- COUNSEL FOR RESPONDENT: Richard H. Otera, Esq.
Lauren A. Deeb, Esq.
Jessica M. Higashiyama, Esq.
Nelson Mullins Riley & Scarborough LLP
- EFFECT OF PROPOSED ORDER: The Proposed Order grants "Respondent Hyundai Motor America's Motion to Dismiss Protests." The Proposed Order finds that HMA has established good cause to terminate the franchise. The Proposed Order would dismiss the protests with prejudice.

Background Findings

- Fairfield Imports Three, LLC, a California Limited Liability Company dba Momentum Hyundai, a California Limited Liability Company ("Momentum Hyundai" or "Protestant") timely filed a termination protest¹ contending Hyundai Motor America, a California

¹ Momentum Hyundai filed two protests: PR-2582-18 pertains to MHA's November 28, 2018, Notice of Termination, which contained a technical defect so it did not fully satisfy the requirements of Vehicle Code section 3060. A subsequent Notice of Termination dated November 30, 2018 was issued that resulted in the second protest, PR-2583-18, being filed. During the telephonic hearing, counsel stipulated that all rulings would apply to both protests.

Corporation (“HMA”) lacks good cause to terminate its franchise.

- Momentum Hyundai is part of the Momentum Auto Group (“Momentum”) which also operated several other dealerships in the Fairfield /Vallejo markets, all of which are owned by Rahim Hassanally. Many of Mr. Hassanally’s dealerships were cross-guarantors of, or parties to, the flooring debts of his other dealerships and Mr. Hassanally was a personal guarantor of the flooring debts of all of the dealerships.
- Protestant has conducted no operations at the dealership since at least November 16, 2018. All eight of the other dealerships of Momentum in Solano County also ceased operations about the same time. (See list in Related Matters below.)
- The last vehicle ordered by Protestant from HMA was in September 2018. The last new Hyundai vehicle that Protestant sold was on November 4, 2018. Protestant has not sold any new Hyundai vehicles following its closure.
- The last warranty claim was submitted on November 14, 2018 for a warranty repair completed on November 13, 2018. Protestant has not conducted any service business following its closure.
- As of at least November 21, 2018, Protestant’s occupational license as a new motor vehicle dealer is designated by the DMV as “Not Valid”.
- Momentum Hyundai has no facilities from which to operate, has no new vehicle inventory, and, along with Momentum Group, is insolvent.
- Momentum Hyundai’s secured lending entity that formerly provided its line of wholesale financing filed a lawsuit against it and various affiliates seeking recovery of \$16 million plus interest, costs, and fees from Protestant, Mr. Hassanally, and the other defendants.
- The likelihood of Momentum Hyundai ever being able to reopen its dealership is so remote as to be deemed impossible.
- In the instant case, a Board order sustaining the Protests cannot prevent the loss of the Momentum Hyundai dealership, cannot protect the investment of the owner, and cannot allow the dealership to continue to serve the public in the market area.
- The ALJ also found that HMA, through declarations and exhibits, as a matter of law has established good cause to terminate the franchise taking into consideration the existing circumstances and all of the specific factors listed in Section 3061.

RELATED MATTERS:

- Related Board Protests: There were a total of 21 protests filed pertaining to the Momentum terminations. The non-HMA protests are as follows:
 - PR-2578-18, PR-2584-18, PR-2585-18 Vallejo Imports, LLC, a California Limited

- Liability Company v. Kia Motors America, Inc., a California Corporation
- PR-2579-18 and PR-2580-18 Fairfield Imports, LLC, a California Limited Liability Company v. Toyota Motor Sales, USA, Inc., a California Corporation
- PR-2581-18 Maverick Auto Group 2, LLC, a California Limited Liability Company v. Volkswagen Group of America, Inc., a New Jersey Corporation
- PR-2586-18 Fairfield Imports Three, LLC, a California Limited Liability Company v. Mitsubishi Motors North America, Inc., a California Corporation
- PR-2587-19 and PR-2588-18 Fairfield Imports Two, LLC, a California Limited Liability Company v. Nissan North America, Inc., a California Corporation (Nissan)
- Protest Nos. PR-2589-18, PR-2590-18, PR-2591-18, and PR-2592-18 Vallejo CJD, LLC, a California Limited Liability Company v. FCA US LLC, a Delaware Limited Liability Company
- Protest Nos. PR-2593-18, PR-2594-18, PR-2595-18, and PR-2596-18 Fairfield CJD, LP, a California Limited Partnership v. FCA US LLC, a Delaware Limited Liability Company
- PR-2597-18 and PR-2598-18 Fairfield Imports Two, LLC, a California Limited Liability Company v. Nissan North America, Inc., a California Corporation (Infiniti)

The Board has already adopted the ALJ's Proposed Decision dismissing the eight protests filed by the FCA franchisees (Vallejo CJD, LLC and Fairfield CJD LP). Motions to Dismiss are pending for all the others with the exception of the Toyota protests.

- Related Case Law: *Duarte & Witting, Inc. v. New Motor Vehicle Bd.* (2002) 104 Cal.App.4th 626, 637
- Applicable Statutes and Regulations: Vehicle Code sections 331, 331.1, 331.2, 3050, 3060 and 3061
Evidence Code section 452
Government Code Section 11425.60, 11515
California Uniform Commercial Code sections 1201(b)(23)
U.S. Code Annotated section 101(32)